

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OFFICE

UNITED STATES OF AMERICA

2004 JUL 18 P 4:20

v.

Crim. No. 04-30020-MAP

MARIO ESPINO,

Defendant.

)

**INITIAL STATUS CONFERENCE REPORT
PURSUANT TO LOCAL RULE 116.5(A)**

The United States of America, by Michael J. Sullivan, United States Attorney for the District of Massachusetts, Thomas J. O'Connor, Jr., Assistant United States Attorney, and Elaine Pourinski, Esq., counsel for Mario Espino, hereby submit the following status report pursuant to Local Rule 116.5(A) and Magistrate Judge Neiman's written order.

1. The parties agree at this time that this case does not require relief from the timing requirements imposed by Local Rule 116.3.

2. The defendant requests discovery concerning expert witnesses under Fed.R.Crim.P. 16(a)(1)(E). The government requests reciprocal discovery pursuant to Fed.R.Crim.P. 16(B)(1)(C). The government also has requested notice of whether the defendant intends to rely upon an alibi defense (pursuant to Fed. R. Crim. P. 12.1), an insanity defense (pursuant to Fed. R. Crim. P. 12.2), and/or a defense of public authority (pursuant to

Fed. R. Crim. P. 12.3). Accordingly, the parties agree that it is appropriate for the Court to establish dates for response by the parties.

3. The parties anticipate that no additional discovery will be provided by the government as a result of the future receipt of information, documents, or reports of examinations or tests. The government has declined, pursuant to L.R. 116.6, to provide information about any unindicted co-conspirators. A copy of the government's letter to defendant's counsel setting forth that declination has been filed with the court.

4. The parties agree that it would be premature to establish a schedule under Fed. R. Crim. P. 12(c) for the filing and disposition of pretrial motions at the present time.

5. The parties agree that the following periods of time are excludable from the Speedy Trial Act:

- a. the period of time from April 21, 2004, the date of the defendant's initial appearance, through May 7, 2004, the date on which the defendant was arraigned, on the grounds that the defendant was absent and unavailable during that time period, pursuant to 18 U.S.C. § 3161(h)(3)(A);
- b. the period of time from May 7, 2004, the date of the defendant's arraignment at which time he notified the government that he was filing a notice of non-waiver of the automatic discovery provisions of the Local Rules, through May 21, 2004, the date on which the government produced its automatic discovery, pursuant to L.R. 112.2 and 18 U.S.C. § 3161(h)(8)(A); and
- c. the period of time from May 21, 2004, the date on which the government produced its automatic

discovery, through June 21, 2004, the date of the next scheduled status conference, during which time the government produced, in accordance with its continuing discovery obligations, copies of the audio and video recordings of the defendant and during which the defendant's counsel was making arrangements for the defendant to review the contents of those recordings, on the grounds that such exclusion is in the interests of justice, pursuant to 18 U.S.C. § 3161(h)(8)(A).

The parties agree that no time will have elapsed under the Speedy Trial Act as of the time of the Initial Status Conference on June 21, 2004, and request that the Court issue an order indicating that the time periods described in the subparagraphs above are excludable pursuant to the Local Rules and 18 U.S.C. § 3161.

6. The parties have not discussed the possibility of resolving this case with a plea and anticipate that a trial will require approximately four trial days.

7. The parties agree that the scheduling of a final status conference would be premature and request that an Interim Status Conference be established.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By:


Thomas J. O'Connor, Jr.
Assistant U.S. Attorney

Elaine Pourinski, Esq.
Counsel for Mario Espino

Dated: June 18, 2004